HIGH COURT OF JUDICATURE AT BOMBAY

srp **CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 2137 OF 2007.

Asif Abdul Kayyu Khan,
Age: 28 years, R/o:Board Avenue,
51, 5th floor, Mira Road.
At present in Kolhapur Central Jail. ..Petitioner.

Versus.

State of Maharashtra.
Through:
(a) Inspector in charge,
Varsova Police Station.
(b) Inspector in Charge,
Thane Gramin.
(c) Suprentedent, Yerwada Jail,
Pune. ..Respondents.

Mr. A. M. Sarogi for the petitioner.
Smt. P. H. Kantharia, APP for the State.

CORAM: S. B. MHASE &
SMT. V.K.TAHILRAMANI,JJ.

DATE: NOVEMBER 21, 2007.

ORAL JUDGMENT (Per S. B. Mhase, J.)

1. Rule returnable forthwith.

2. This is a petition by the accused who is convicted under sections 341, 376G and 506 of the Indian Penal Code in a Crime No. 132 of 2005 and he is sentenced to undergo imprisonment for five years and to pay compensation of Rs.80,000/- to the victim. He has applied for a furlough which was granted. However, he was not released on furlough refusing the surety offered by the petitioner. The surety was/is Smt.

Habolia Abdul Karim Khan, age 50 years, who happens to be his mother. The reason for not accepting the said surety is that she is of 50 years of age. Therefore the petition.

3. It is an admitted position at bar that this accused was earlier released on furlough and at that time the surety of the same lady was accepted. We do not find any legal bar to reject the surety on account of age, namely, the person is old. We are also told at bar that the amount of Rs.80,000/- which is to be paid by way of compensation has been paid by the petitioner. We are told at the bar that the appeal preferred by the present petitioner is pending before this Court. Taking into consideration all these facts and the conduct of the petitioner - accused during the pendency of trial, we find that the reasons for not releasing the petitioner are not genuine and they have been invented to deprive the petitioner from getting the furlough provisions.

4. In the result, the petition is allowed. Respondents are directed to accept the surety of Smt. Habolia Abdul Karim Khan and the petitioner be released on furlough as per the provisions of the furlough. Rule made absolute accordingly.

(SMT. V.K.TAHILRAMANI,J.) (S.B.MHASE, J.)